REFERRAL TO MERITS PANEL REQUESTED

CASE NO. 15-16133
(PRIOR APPEAL: NO. 10-15616)

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CAROLYN JEWEL, ERIK KNUTZEN, AND JOICE WALTON,
PLAINTIFFS-APPELLANTS,

V.

NATIONAL SECURITY AGENCY, *ET AL.*,
DEFENDANTS-APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA, NO. 08-CV-04373-JSW
THE HONORABLE JEFFREY S. WHITE, UNITED STATES DISTRICT JUDGE, PRESIDING

PLAINTIFFS-APPELLANTS' OPPOSITION TO APPELLEES' MOTION TO DISMISS THE APPEAL

RACHAEL E. MENY
MICHAEL S. KWUN
AUDREY WALTON-HADLOCK
BENJAMIN W. BERKOWITZ
JUSTINA K. SESSIONS
PHILIP J. TASSIN
KEKER & VAN NEST, LLP
633 Battery Street
San Francisco, CA 94111
Telephone: (415) 391-5400

THOMAS E. MOORE III
ROYSE LAW FIRM, PC
1717 Embarcadero Road
Palo Alto, CA 94303
Telephone: (650) 813-9700

ARAM ANTARAMIAN
LAW OFFICE OF ARAM ANTARAMIAN
1714 Blake Street
Berkeley, CA 94703
Telephone: (510) 289-1626

RICHARD R. WIEBE
LAW OFFICE OF RICHARD R. WIEBE
One California Street, Suite 900
San Francisco, CA 94111
Telephone: (415) 433-3200

CINDY A. COHN
LEE TIEN
KURT OPSAHL
JAMES S. TYRE
DAVID GREENE
MARK RUMOLD
ANDREW CROCKER
JAMIE L. WILLIAMS
ELECTRONIC FRONTIER FOUNDATION
815 Eddy Street
San Francisco, CA 94109
Telephone: (415) 436-9333

Counsel for Plaintiffs-Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

Federal Rules

Ninth Circuit General Orders

Constitutional Provisions

Other Authorities

INTRODUCTION

1. The motion to dismiss lacks merit.

Plaintiffs-appellants appeal a judgment in favor of the government defendants-appellees on plaintiffs' claim that the government defendants' suspicionless mass interception and searching of plaintiffs' Internet communications violates their Fourth Amendment rights. The district court entered judgment on this claim under Federal Rule of Civil Procedure 54(b). In doing so, it considered and rejected the government defendants' argument that entry of judgment under Rule 54(b) was improper.

The government defendants have now renewed their unsuccessful objections and have moved to dismiss the appeal for lack of jurisdiction under Rule 54(b). The motion to dismiss lacks merit, and provides no basis for dismissing the appeal. Plaintiffs' Fourth Amendment Internet interception and content-searching claim is legally and factually distinct from their other claims, and entry of judgment under Rule 54(b) was proper. A claim on which judgment is entered under Rule 54(b) "do[es] not need to be separate and independent from the remaining claims." *Noel v. Hall*, 568 F.3d 743, 747 (9th Cir. 2009).

2. A staff attorney or the Appellate Commissioner should refer the motion to dismiss to the merits panel for decision.

Recognizing the significance of this appeal, this Court on June 23, 2015 granted plaintiffs' motion to expedite the appeal over the government defendants'

opposition. 9th Cir. Dkt. No. 10; *Jewel v. NSA*, 673 F.3d 902, 912 (9th Cir. 2011) (plaintiffs' lawsuit "challenges conduct that strikes at the heart of a major public controversy involving national security and surveillance"). The Court set a due date of August 4, 2015 for plaintiffs' opening brief. *Id*. Since the time the Court issued its order, plaintiffs have been diligently working to prepare their brief for filing on that date.

In their June 19 opposition to plaintiffs' motion to expedite, the government defendants stated that they intended to file a motion to dismiss the appeal. 9th Cir. Dkt. No. 7. Nevertheless, they delayed filing their motion for over a month, until July 24, 2015, even though the motion is nothing more than a recycling of unsuccessful arguments they first made in the district court almost three months ago. The government defendants offer no explanation for waiting to file the motion until ten days before plaintiffs' brief is due, when the motion will disrupt and delay the expedited schedule this Court has ordered.

Plaintiffs respectfully request that a staff attorney or the Appellate Commissioner refer the government defendants' motion to dismiss to the merits panel for decision. 9th Cir. General Orders, Appendix A, at 57(a). This Court ordinarily resolves questions of its appellate jurisdiction over a Rule 54(b) judgment as part of its decision on the merits of the appeal. *See*, *e.g.*, *Noel*, 568 F.3d at 745 n.1, 747; *Texaco, Inc. v. Ponsoldt*, 939 F.2d 794, 797 (9th Cir. 1991);

Gregorian v. Izvestia, 871 F.2d 1515, 1518 (9th Cir. 1989); *Continental Airlines v. Goodyear Tire & Rubber Co.*, 819 F.2d 1519, 1524 (9th Cir. 1987).

Here, referral to the merits panel is appropriate because the question of jurisdiction is bound up with the merits of the appeal. Whether the Rule 54(b) judgment was properly entered depends on the details of what the district court decided in its order granting summary judgment to the government defendants, on the relation of plaintiffs' Fourth Amendment Internet interception claim to the other pending claims, and on the history of the litigation. *See* 9th Cir. General Orders, Appendix A, at 57(a).

There are additional reasons why referral to the merits panel is especially appropriate here. The prior appeal in this lawsuit and appeals from related cases in the district court, stretching back to 2007, have all been handled by a single panel of this Court, composed of Judges Pregerson, Hawkins, and McKeown. *Jewel v. NSA*, 673 F.3d 902 (9th Cir. 2011); *Al-Haramain Islamic Found., Inc. v. Obama*, 705 F.3d 845 (9th Cir. 2012); *In re Nat'l Sec. Agency Telecommunications Records Litig.*, 671 F.3d 881 (9th Cir. 2011); *Hepting v. AT&T Corp.*, 539 F.3d 1157 (9th Cir. 2008); *Al-Haramain Islamic Found., Inc. v. Bush*, 507 F.3d 1190 (2007). Assuming this panel retains jurisdiction of this appeal under Ninth Circuit General Order 3.7, it will be able to efficiently dispose of the motion.

Additionally, it is preferable to refer the motion to the merits panel in the first instance because it is likely that a motions panel ultimately would do so in any event. Motions panels of this Court and the other Courts of Appeals regularly refer motions to dismiss for lack of jurisdiction to the merits panel that will decide the appeal. *See*, *e.g.*, *California ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 837 (9th Cir. 2004); *In re Nat'l Mortgage Equity Corp. Mortgage Pool Certificates Litig.*, 821 F.2d 1422, 1423 (9th Cir. 1987); *In re Victor Technologies Sec. Litig.*, 792 F.2d 862, 863 (9th Cir. 1986); *Elliott v. Archdiocese of New York*, 682 F.3d 213, 218 (3d Cir. 2012) (motions panel referred question of appellate jurisdiction over Rule 54(b) judgment to merits panel). Moreover, even when a motions panel denies a motion to dismiss for lack of jurisdiction, its decision is not dispositive and may be revisited by the merits panel, which is an additional reason for referring the government defendants' motion to the merits panel in the first instance. *U.S. v. Houser*, 804 F.2d 565, 567-69 (9th Cir. 1986).

As the Court has recognized, there is good cause for expediting the appeal, and referral to the merits panel will preserve the expedited briefing and hearing schedule previously ordered. The public interest weighs in favor of an early resolution by this Court of plaintiffs' appeal, much as the government defendants might prefer to insulate their district court victory from any scrutiny by this Court for as long as possible.

FACTS AND PROCEDURAL HISTORY

The district court entered judgment on plaintiffs' Fourth Amendment challenge to the government's admitted, distinct program of intercepting and content-searching Internet communications transiting on the Internet "backbone"—the high-capacity communications cables that interconnect various Internet communications providers. The government calls this program of mass, suspicionless Internet surveillance by the name "Upstream collection." District Court ECF No. 262 at 6 (all further ECF references are to the district court docket). It is distinct from other surveillance programs the government conducts, such as its mass collection of telephone records.

The government admits the following:[1] The NSA intercepts and "acquire[s] communications that are transiting through circuits that are used to facilitate Internet communications, what is referred to as the 'Internet backbone.'" ECF No. 262 at 6, 11-12. "[T]he [NSA] intercepts communications directly from the Internet 'backbone'" using "NSA-designed . . . Internet collection devices [that]

[1] These admissions are taken from the July 2014 *Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act* by the Privacy and Civil Liberties Oversight Board ("PCLOB"). The PCLOB is an independent agency in the executive branch charged with reviewing anti-terrorism activities for their impact on privacy and civil liberties. 42 U.S.C. § 2000ee.

acquire transactions [i.e., communications] as they cross the Internet." ECF No. 285-3 at 29; ECF No. 310 at 14.

"[T]he acquisition occurs with the compelled assistance of providers that control the telecommunications 'backbone' over which . . . Internet communications transit." ECF No. 262 at 6, 11-12. The stream of Internet backbone communications are then filtered in an attempt to exclude wholly domestic communications. ECF No. 262 at 12. The contents of the filtered communications then are searched looking for "the selector in the body of the communication." ECF No. 262 at 6.

Plaintiffs moved for partial summary judgment on their claim that the government defendants' suspicionless interception and searching of plaintiffs' Internet communications as part of its Upstream collection program violates Fourth Amendment. ECF Nos. 261, 294-3. The government defendants cross-moved for partial summary judgment on the same claim. ECF Nos. 285, 286, 299-3.

The district court granted the government defendants' summary judgment motion and denied plaintiffs' summary judgment motion. ECF No. 321. Despite the evidence presented, including the government's many admissions of the Upstream program's mass interception and searching of Internet communications via the Internet backbone, the district court found that plaintiffs lacked standing to

challenge the surveillance and, in the alternative, that the state secrets privilege barred litigation of their claim. *Id*.

Plaintiffs moved for entry of judgment under Rule 54(b). ECF Nos. 323, 325. The district court, after considering and rejecting the government's opposition (ECF No. 324), granted plaintiffs' motion and entered judgment. ECF Nos. 327, 328.

Plaintiffs' lawsuit has been pending since 2008. The district court dismissed it once before for lack of standing, only to have this Court reverse the dismissal. *Jewel*, 673 F.3d at 905. The Court found that plaintiffs "have standing to bring their statutory and constitutional claims against the government for what they describe as a communications dragnet of ordinary American citizens" "[i]n light of detailed allegations and claims of harm linking [plaintiffs] to the intercepted telephone, internet, and electronic communications." *Id*.

ARGUMENT

I. This Court Takes a Pragmatic Approach to Rule 54(b) and Does Not Require a Rule 54(b) Judgment to Be Separate and Independent from the Remaining Claims.

The government's motion to dismiss lacks merit. "[C]laims certified for appeal [under Rule 54(b)] do not need to be separate and independent from the remaining claims, so long as resolving the claims would 'streamline the ensuing litigation.'" *Noel*, 568 F.3d at 747; *accord Texaco*, 939 F.2d at 797-98. Plaintiffs'

Fourth Amendment Internet interception claim is legally and factually distinct from their other remaining claims, and there is no just reason for delaying entry of judgment on it.

"Deference is granted to the district court's decision because it is 'the one most likely to be familiar with the case and with any justifiable reasons for delay[ing]' entry of judgment under Rule 54(b)." *Texaco*, 939 F.2d at 797 (quoting *Curtiss-Wright Corp. v. General Elec. Co.*, 446 U.S. 1, 10 (1980); other internal quotation marks omitted).

The district court—the court most familiar with plaintiffs' claims, with the history of proceedings in this lawsuit, and with its own order granting partial summary judgment that is the subject of this appeal—carefully examined the defendants' objections to the entry of judgment pursuant Rule 54(b) and found their objections to be without merit. The district court entered judgment, concluding that its partial summary judgment order had completely and finally resolved plaintiffs' claim that defendants' mass interception and searching of their Internet communications violates their Fourth Amendment rights and concluding that no just reason existed for delaying entry of final judgment on the claim. ECF Nos. 327, 328.

In their motion to dismiss, the government defendants offer the same arguments raised and rejected in the district court. *See* ECF No. 324. They begin

by misstating the Rule 54(b) standard for entry of judgment, erroneously contending that whenever common facts are relevant to a variety of separate claims, all of those separate claims merge into a single "claim" for purposes of Rule 54(b). Defendants-Appellants' Motion to Dismiss ("Mot.") at 7.

But absolute independence of claims is not the governing standard under Rule 54(b). A Rule 54(b) judgment is proper even if the claim is not "separate and independent from the remaining claims." *Noel*, 568 F.3d at 747; *Texaco*, 939 F.2d at 797-98. The government defendants themselves grudgingly acknowledge this after ten pages of argument to the contrary. Mot. at 11 (citing *Noel*, 568 F.3d at 747, for the proposition that claims need not be separate and independent).

Instead, the Court has "embraced 'a more pragmatic approach focusing on severability and efficient judicial administration.'" *Wood v. GCC Bend, LLC*, 422 F.3d 873, 880 (2005) (quoting *Continental Airlines*, 819 F.2d at 1525). This case-specific inquiry eschews bright-line rules in favor of a careful examination of the claim the district court has adjudicated in the context of the lawsuit as a whole and the relevant equities. *See Wood*, 422 F.3d at 878-79 (citing *Curtiss-Wright*, 446 U.S. at 10).

Thus, entry of final judgment under Rule 54(b) can be appropriate even where "the remaining claims would require proof of the *same facts* involved in the dismissed claims." *Texaco*, 939 F.2d at 798 (citing *Continental Airlines,* 819 F.2d

at 1525) (emphasis added). Above all, entry of judgment under Rule 54(b) "is proper if it will aid 'expeditious decision' of the case." *Texaco,* 939 F.2d at 797.

The Court's pragmatic approach reflects the reality that in nearly every case in which final judgment is entered on a claim under Rule 54(b), the remaining claims will be factually or legally connected to some degree with the adjudicated claim, which is likely why they were initially brought in the same complaint. Multiple claims are brought in a single lawsuit precisely because they share some factual or legal connection, and Rule 54(b) was designed to accommodate this reality, not deny it.

The government defendants' extreme argument that a Rule 54(b) judgment is never proper when there are any facts common to multiple claims (Mot. at 7) runs aground on this substantial and contrary authority. Moreover, the authorities relied on by the government do not reflect "[t]he present trend . . . toward greater deference to a district court's decision to certify under Rule 54(b)." *Texaco*, 939 F.2d at 798. Two of the government's authorities, *Arizona State Carpenters Pension Trust Fund v. Miller*, 938 F.2d 1038, 1040 (9th Cir. 1991), and *Hasbrouck v. Sheet Metal Workers Local 232*, 586 F.2d 691, 694 (9th Cir. 1978), both rely on a much older case, *CMAX, Inc. v. Drewry Photocolor Corp.*, 295 F.2d 695 (9th Cir. 1961), that takes a rigid and outmoded approach to deciding whether claims

are distinct, contrary to the Court's admonition in *Continental Airlines* to adopt a pragmatic, case-by-case approach.[2]

Thus, the government defendants' conception that a Rule 54(b) judgment must be a "unitary" claim is a made-up one for which they cite no authority and which this Court has rejected. Mot. at 1; *Wood*, 422 F.3d at 880 ("abjur[ing] the task" of "deciding whether a pleading is a unitary claim or multiple claims" in favor of the *Continental Airlines* pragmatic approach).

As the Court has aptly observed, "[d]istinguishing 'claims' from theories of recovery for purposes of Rule 54(b) . . . eludes the grasp like quicksilver." *Continental Airlines*, 819 F.2d at 1525. If Rule 54(b) were reserved for cases in which the adjudicated claim had nothing factually or legally in common with any other claim, it could almost never be used for its purpose of efficiently promoting the resolution of lawsuits.

[2] Moreover, in *Miller* the district court dismissed only a request for punitive damages that was one of several remedies pleaded for an ERISA claim. This Court held that the punitive damages request was merely one of "several different remedies" for the alleged ERISA violation, not a separate claim on which judgment could be entered. *Miller*, 938 F.2d at 1040. Here, the district court entered judgment on the merits of plaintiffs' Fourth Amendment Internet interception claim; it did not merely decide whether one of several potential remedies for that claim was available.

II. Plaintiffs' Fourth Amendment Internet Interception Claim Is Legally and Factually Distinct from Plaintiffs' Remaining Claims.

The government defendants fail to carry their burden of showing that entry of judgment under Rule 54(b) was improper. Plaintiffs' Fourth Amendment Internet interception claim is legally and factually distinct from their remaining claims, and the district court properly determined that there was no just reason for delaying an appeal. There is no risk that the Court's decision of this appeal will become a nullity or a futile exercise as a result of further proceedings either in the district court or this Court. To the contrary, deciding the appeal will advance the ultimate resolution of the case by finally resolving the merits of one of the central claims in plaintiffs' lawsuit.

The government defendants' contention that there is "substantial overlap between the issues adjudicated in the partial summary judgment order and the remainder of the case" (Mot. at 13) lacks merit. Plaintiffs' complaint challenges four distinct forms of unlawful surveillance by the government: Internet content, Internet records (metadata), telephone content, and telephone records (metadata). The constitutional and statutory provisions on which plaintiffs rely for their various claims will have to be applied to the differing factual contexts presented by each form of surveillance. Plaintiffs' Fourth Amendment Internet interception claim goes to only the first of these four forms of surveillance and so is factually and legally distinct from the others.

The government itself treats its Upstream Internet backbone surveillance as distinct from its other forms of surveillance. As explained by the PCLOB: "the upstream acquisition of telephone and Internet communications differ from each other, and these differences affect privacy and civil liberty interests in varied ways." ECF No. 262 at 10. And both are distinct from the government's telephone records collection: "Under one program, implemented under Section 215 of the USA Patriot Act, the NSA collects domestic telephone metadata (i.e., call records) in bulk." ECF No. 285-3 at 7.

The government defendants begin by presenting a red herring. They repeatedly point to the fact that only three plaintiffs (plaintiffs Jewel, Knutzen, and Walton) moved for partial summary judgment on the Fourth Amendment Internet content interception claim, asserting that the remaining two plaintiffs (plaintiffs Hepting and Hicks) in the future will seek to adjudicate in the district court the "exact same Fourth Amendment arguments and underlying factual allegations" that the district court already adjudicated. Mot. at 7, 8, 9, 10. As the government defendants well know and as plaintiffs explained in the complaint and in their summary judgment papers, this is not so.

Plaintiffs Jewel, Knutzen, and Walton are AT&T Internet customers; the factual basis of plaintiffs' summary judgment motion was the government's interception of the Internet communications of AT&T customers like them.

Plaintiffs Hepting and Hicks, unlike the moving plaintiffs, are not AT&T Internet customers; further, plaintiff Hicks passed away during the long pendency of this lawsuit. ECF No. 1 (Complaint) at ¶¶ 20-21; ECF No. 123; ECF No. 261 at 1 n.1. Thus, plaintiffs Hepting and Hicks have no Fourth Amendment claim based on the government's interception of the Internet communications of AT&T Internet customers.[3]

The government defendants also are mistaken in asserting that the declarations of two of plaintiffs' declarants, former AT&T employee Mark Klein and Internet expert J. Scott Marcus, are "central to the bulk of the claims still remaining in district court." Mot. at 9. Those declarations have nothing to do with plaintiffs' telephone content and telephone records claims, for example. They are further mistaken in asserting that the district court held that those declarations "implicated information protected by the state secrets privilege." Mot. at 9, 10. The government has never asserted the state secrets privilege over the Klein and Marcus declarations in the nine years since the declarations were filed, and long

[3] The government defendants also make the incomprehensible assertion that the district court's summary judgment order "left unresolved . . . those same [Internet content interception] factual allegations as they relate to" plaintiffs Jewel, Knutzen, and Walton's "other theories of liability under the Fourth Amendment." Mot. at 9. Plaintiffs have no "other theories of liability under the Fourth Amendment" for the government's interception and searching of the contents of their Internet communications apart from what they put forward in their summary judgment motion.

ago affirmatively waived any privilege with respect to them. ECF No. 295 at 18-23.

The government defendants also argue that the district court will apply the "legal principles articulated in the summary judgment order" to other claims, "which may require different analysis." Mot. at 10. But the fact that a general legal principle (the law of standing, for example) applies differently to different claims arising out of different facts does not mean the claims are all the same and that judgment under Rule 54(b) is precluded.

Finally, the government defendants argue repeatedly that there is "factual overlap" between plaintiffs' Fourth Amendment Internet interception claim and the remaining claims, even though they admit the overlap "is not complete."[4] Mot. at 11-12. But, as explained above, the government itself treats its four forms of surveillance as separate programs, and different evidence is relevant to each. Thus, there is no significant overlap between the evidence plaintiffs presented in support

[4] Indeed, many of the claims remaining in the district court go to the government's past surveillance activities and therefore involve a significantly different legal context. The government conducted its surveillance before 2007 as part of the so-called President's Surveillance Program, without any FISA court authorization and in violation of FISA, based solely on assertions of inherent presidential authority. Because those surveillance activities were conducted in defiance of the limitations imposed by Congress in FISA, the legal issues involved are fundamentally different.

of their Fourth Amendment Internet interception claim and their telephone content and telephone records claims.

More fundamentally, as noted above, a claim on which judgment is entered under Rule 54(b) need not "be separate and independent from the remaining claims." *Noel*, 568 F.3d at 747. And Rule 54(b) does not forbid entry of judgment even where "the remaining claims would require proof of the same facts." *Texaco*, 939 F.2d at 798. What matters here is that "the adjudicated claim[] [is] separable from the others and . . . the nature of the claim [is] such that no appellate court would have to decide the same issues more than once." *Wood*, 422 F.3d at 878 n.2.

Rule 54(b) leaves the decision as to whether a claim is ready for appeal to "the sound judicial discretion of the district court." *Curtiss-Wright*, 446 U.S. at 8. The district court wisely chose to enter final judgment on plaintiffs' Fourth Amendment Internet interception claim. The government defendants' vague and ungrounded speculation that deciding this appeal will result in a torrent of successive appeals for years to come has no basis in the realities of this lawsuit. Mot. at 2, 11. To the contrary, the guidance resulting from the Court's decision of this appeal is likely to simplify and speed proceedings on the remaining claims in the long run.[5]

[5] The government defendants' suggestion that in the alternative the case be remanded back to the district court for additional Rule 54(b) findings is just

footnote continued on following page

An early decision on plaintiffs' Fourth Amendment Internet interception claim by this Court is also in the public interest. The district court recognized that this claim raises "serious issues, namely national security and the preservation of the rights and liberties guaranteed by the United States Constitution." ECF No. 321 at 2. Given the importance of the issues raised by plaintiffs' claim to the national debate on the NSA's activities and the "broad impact" that a final appellate ruling on plaintiffs' claim would have, "[t]he most important factor counseling in favor of allowing an immediate appeal in this case is the public interest." *Quinn v. City of Boston*, 325 F.3d 18, 27 (1st Cir. 2003).

---

footnote continued from previous page
another meritless delaying tactic that should be rejected. Mot. at 12-13. As the government admits, such findings are not required. *Noel*, 568 F.3d at 747 n.5. Here, this Court can "independently determine the propriety of the order," *id.*, because the "posture of the case is readily obtainable from the briefs and record." *Alcan Aluminum Corp. v. Carlsberg Financial Corp.*, 689 F.2d 815, 817 (9th Cir. 1982).

CONCLUSION

The government defendants' motion to dismiss should be referred to the merits panel for decision and the expedited briefing and hearing schedule should be retained. On its merits, the motion should be denied.

Dated: July 27, 2015

Respectfully submitted,

s/ *Richard R. Wiebe*
RICHARD R. WIEBE
LAW OFFICE OF RICHARD R. WIEBE

CINDY A. COHN
DAVID GREENE
LEE TIEN
KURT OPSAHL
MARK RUMOLD
ANDREW CROCKER
JAMES S. TYRE
JAMIE L. WILLIAMS
ELECTRONIC FRONTIER FOUNDATION

THOMAS E. MOORE III
ROYSE LAW FIRM

RACHAEL E. MENY
BENJAMIN W. BERKOWITZ
MICHAEL S. KWUN
AUDREY WALTON-HADLOCK
JUSTINA K. SESSIONS
PHILIP J. TASSIN
KEKER & VAN NEST LLP

ARAM ANTARAMIAN
LAW OFFICE OF ARAM ANTARAMIAN

Counsel for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on July 27, 2015.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: July 27, 2015

/s/ Richard R. Wiebe
RICHARD R. WIEBE